IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27/12/2002

CORAM

THE HON'BLE MR.JUSTICE E.PADMANABHAN

WRIT PETITION No. 9148 of 2002
AND
WMP.Nos: 20118 and 20119 of 2002
....
Dr.V.Geetha ..Petitioner

-Vs-

1. The State of Tamil Nadu
rep. by Secretary to Government
Health and Family Welfare Department
Secretariat, Chennai-9

2. The Director of Medical Education
Kilpauk, Chennai-10

3. The Secretary/Additional
Director of Medical Education
172, Periyar EVR High Road,
Kilpauk, Chennai-10 ..Respondents

For petitioner:: Mr. G.Subramaniam S.C.,
for Mr.M.S.Sathyanarayanan

For respondents:: Mr.V.R.Rajasekar
Special Govt.,Pleader

Petition filed under Article 226 of The Constitution of India praying for the issue of a writ of declaration, as stated therein.

:O R D E R

The writ petitioner has prayed for the issue of a writ of declaration to declare clause 17 of the Prospectus for admission to the P.G. Diploma/Degree Courses in Tamil Nadu Government Medical/Dental and Self Financing Dental Colleges for the academic year 2002-2003 as ultra vires and unconstitutional and consequently direct the respondents to consider the application submitted by the petitioner for selection to P.G.Diploma in

Obstetrics and Gynecology without reference to Clause No.17 of the Prospectus for the Academic Year 2002-2003 issued by the second respondent.

2. Heard Mr. G.Subramaniam, learned senior counsel appearing for M/s.M.Sathyanarananan and M.S.Sivakumar, for the petitioner and Mr.V.R.Rajasekar, Special Government Pleader appearing for the respondents.

3. The petitioner who has secured the Bachelor of Medicine and Surgery during 1996 entered the Tamil Nadu Medical Services and is holding the post of Civil Assistant Surgeon. During 1999, the petitioner joined M.S.,(General Surgery) and acquired the qualification during September, 2001. As the petitioner desired to join P.G Degree/Diploma in DGO namely obstetrics and Gynecology, has come before this court challenging Clause 17 of the Prospectus issued by the third respondent. It is not necessary to refer to any other factual matrix.

4. A counter has been filed and it is also not necessary to refer to the details set out in the counter affidavit.

5. The points that arise for consideration are:

(A) Whether Clause 17 of the Prospectus is liable to be declared as ultra vires and unconditional and illegal?

(B) Whether the petitioner is entitled to any consequential direction prayed for?

6. The Prospectus issued by the Director of Medical Education, Chennai for admission to P.G Diploma/Degree/M.D.S Five Year M.Ch (NeuroSurgery)Courses in Tamil Nadu Government Medical/Dental and Self Financing Dental Colleges for the year 2002-2003 consist of General Instructions and Annexures I to V. Clause 17 of the General Instructions is being challenged as unconstitutional. It is essential to set out the very clause itself, which reads thus:-

"17. Candidates who have already acquired a Postgraduate Degree in any one discipline are not eligible to apply for any Postgraduate Diploma/Degree/Five Year M.Ch.(Neuro-Surgery) courses."

7. Mr.G.Subramaniam, learned senior counsel contended that there is no justification at all to deny admission to the petitioner merely because she has already acquired M.S.(General Surgery), a Post Graduate qualification, as such restriction is arbitrary, discriminatory and ultra vires and unconstitutional.

8. Per contra, Mr.M.S.Rajasekar, learned Special Government Pleader contended that the point raised in this writ petition has already been decided by the Division Bench of this Court in Director of Medical Education Chennai-5 Vs. Dr.V.Ramalakshmi, reported in 1999 Writ L.R. 481. So also the decision of K.Govindarajan,J., in Dr.M.R.Sivakumar Vs. State of Tamil Nadu and others, reported in 1999 Writ L.R. 488. The contentions advanced by

Mr.G.Subramaniam, learned senior counsel though argumentative, persuasive, requires elaborate consideration, however, this court will not be justified in examining the matter any further in the light of the above pronouncements heavily relied.

9. In Dr.M.R.Sivakumar Vs. State of Tamil Nadu and others, reported in 1999 Writ L.R. 488, K.GOVINDARAJAN,J., has decided the challenge in respect of a clause in the Prospectus, which reads thus:-

"A candidate who has already acquired a higher speciality degree course in any one discipline is ineligible to apply for any course during 1998-99 session"

10. The above clause as well as the clause impugned in this writ petition are of the same effect. While following the decision to the Division Bench in Director of Medical Education Vs. Dr.V.Ramalakshmi, reported in 1999 Writ L.R. 481 (W.A.No.955/1997), the learned Judge repelled the challenge to the said clause by holding that the clause in the prospectus is not violative of Articles, 21, 41, 45 and 46 and held that the said clause is not discriminatory, nor it offends Article 21.

11. The Division Bench in Director of Medical Education and Dr.V. Ramalakshmi, reported in 1999 Writ L.R.481, considered the challenge to para 4 of the Prospectus issued for the year 1997-1998 and held that it is not unconstitutional nor ultra vires nor arbitrary. The Division Bench held thus:-

"12. Further, we are also unable to accept the general assertion of the learned senior counsel for the respondent of the alleged violation of Articles 14,19 and 21 of the Constitution of India. As noticed earlier, such right has been construed to flow out of Article 21 of the Constitution of India and that too not in absolute terms or extent but confined up to the age of 14 years. The alleged violation of Articles 19 and 21 of the Constitution of India has no meaning or merit of acceptance in our hands. The respondent's counsel was unable to substantiate any lea of discrimination and except asserting that it is arbitrary and has no nexus or relevant to the object of selection of candidates for admission to undergo the studies in question, nothing illegal has been pointed out and no violation of any other law has been pleaded or proved. The right of the Government to impose restrictions or regulate the conduct while continuing in service, and as part of such rights to deny permission for persons like the respondent, to pursue further studies while in service, has been considered by us supra and upheld and cannot be said to be violative of any of the statutorily protected rights of the respondent. Having regard to the limited number of seats available and the financial commitments involved for the State, it is open to the Government to regulate admission of candidates who are already in service, to such courses in higher studies, of only those who have no cloud around them and who have no mixed or adverse record of service. While so, there is no rhyme or reason in the mere cry of arbitrariness, pleading some hardship only, since such claims of arbitrariness could be countenanced and rights of the Government asserted denied only if some pr ovision of law or of Constitution is found to have been violated. In this case, no such violation having been substantiated, the alleged violation of Article 14 of the Constitution of India has no merit

whatsoever and has to be and is rejected. ....."

12. The above reasoning of the Division Bench squarely answer the contentions advanced herein as well.

13. In State of Andhra Pradesh and another Vs. Lauv Narendranath and others etc., reported in 1971 (1) SCC 607, what was challenged being that entrance test prescribed by the State for selection of the candidate in Medical College as not justified in law, discriminatory, invalid for want of publication and amounted to undue interference with the personal liberty of the candidates. In the said case, while examining the refusal to admit to medical College, it was held that such refusal is not violative of Article 21. In the said pronouncement it has been further held that everybody subject to the eligibility prescribed by the University is at liberty to get admission to the Medical Course. Number of seats being limited when compared to the total number of candidates and due to high competition, every candidate could not expect to be admitted and such denial would not affect personal liberty under Art.21 of The Constitution.

14. The learned senior counsel appearing for the petitioner relied upon Deepak Vs. Punjab University , reported in AIR 1989 SC 903 and contended that the impugned clause in the Prospectus is unconstitutional and violative of Art.14 of The Constitution and as such invalid.

15. This court has to point out that having already acquired a Post Graduate Degree in a particular speciality, the petitioner cannot once again seek for admission to another speciality in P.G.Course, which would mean that the petitioner tries to secure successive Post Graduate qualifications, though in different specialiaties. The petitioner cannot claim that she is to be treated on par with others who possess MBBS degree while factually she has already acquired a Post Graduate qualification, namely M.S (General Surgery). The petitioner cannot put forward the plea of discrimination as well, as the petitioner is not identically placed or on par with any other candidate with a qualification of Bachelor of Medicine and Surgery.

16. Having acquired a P.G. Qualification namely, M.S.(General Surgery), the petitioner seeks to acquire another P.G. Degree in another speciality which in effect would result in undue advantage being conferred on the petitioner, while deprivation of a valuable opportunity to other graduates in Medicine. The petitioner cannot put forward the plea of discrimination after having acquired one P.G., degree, nor she could be treated equally or on par with other graduates in Medicine and Surgery. The plea of discrimination cannot be sustained.

17. In Suganthi Vs. State of Tamil Nadu and another reported in 1984 Writ L.R. Page 249 (D.B.) one of the clause in the prospective, which denied admission to those students who have already got admission in other professional courses, such as Engineering, was challenged.

18. Clause 7(1) of the Prospectus which was the subject matter of challenge before the Division Bench runs thus:-
"Candidate who have already undergone professional courses for the first semester (six months) in agriculture, veterinary BDS, Engineering, B.Pharm etc., and those who have failed three times in the first year MBBS Course are not eligible to apply for admission to MBBS course"

19. As per clause 7(1) of the Prospectus a candidate who has already undergone for the first semester in agriculture, agriculture, veterinary BDS, Engineering, B.Pharm etc., and those who have failed three times in the first year MBBS Course are not eligible to apply for admission to MBBS course. While examining the validity of the said clause in the Prospectus, the said Division Bench, while following the decision in Chitralekha Vs. State of Mysore reported in AIR 1964 SC 1823 repelled the contentions and held thus:-

"5. Selection of best candidates for admission to available seats in different category in professional colleges with an eye to restrict the number on some reasonable basis since the colleges cannot hold beyond a particular number of students, is a power given to the authorities after evolving certain policies for the selection. One such policy in present case is to deny admission to those students who have already got into the processional colleges mentioned in clause 7(1) of the prospectus and had undergone six months course (first semester). Such a policy, in our opinion, is reasonable and has a nexus to the object sought to be achieved Viz., manning all the colleges run by the Government efficiently and in distributing the seats available equitably. If a candidate studying in an engineering college, which course also got only a limited number of seats and for which also there is competition, and after writing the first semester, is allowed to compete for a seat in the medical college, it will definitely deprive the candidates who have come in for the first time for selection to the medical course. A candidate who has already secured a seat in the professional college stands on a different category and that candidate's chances of becoming a graduate in that professional college is a fait accompli. Considering the limited number of seats in various professional colleges, the Government thought it fit to lay down a policy as mentioned in Clause 7(1) of the prospectus. Further, if a candidate who has got a seat in the engineering college deserts it, for the admission which he gets in another professional college such as medical college, the seat in that particular engineering college will go as a waste. The wisdom of the government thought it necessary to bring in such a policy, which has a nexus in our opinion for the bject to be achieved. By this policy there will be equitable distribution of limited seats available in all the professional colleges manned by the State after determining the merit of the candidates eligible to appear for such a selection."

20. In the present case also it is to be pointed out that the State Government runs the professional colleges and it cannot be said that the Government has no power to scheme the applicants on some reasonable terms, and restrict the admission and distribute the seats equitably to those who are longing for admission.

21. In Abhishekumar Vs. LLRM Medical College, Meerut, reported in 1

986 Supple. SCC 543, the Supreme Court upheld the Government's power under Article 162 and held that where the number of seats for admission to various P.G both degree and diploma are limited and large number of candidates undoubtedly apply for those courses of study an order laying down qualification for candidates to be eligible for being considered for admission to the said courses on the basis of merit specified by regulation cannot be said to be in conflict with regulations of All India Medical Council Act.

22. In the same pronouncement the Supreme Court laid down as a measure of social justice, equal opportunity or admission has to be accorded in admission to P.G. Courses

23. In D.N.Chanchala Vs. State of Mysore and others reported in 1971 (2) SCC 293, the Apex Court held that the State which bears the financial burden of running the Government colleges is entitled to lay down criteria for admission in its own colleges and to decide the source from which admission would be made, provided of course such classification is not arbitrary and has a rational basis and a reasonable connection with the object of the Rules.

24. Following the above pronouncement the Apex Court, the Two Division benches as well as while agreeing with the pronouncement of K. GOVINDARAJAN,J., in Dr.M.R.Sivakumar Vs. State of Tamil Nadu and others, reported in 1999 Writ L.R. 488, the contention advanced by the learned senior counsel Mr.G.Subramaniam, this court holds cannot be countenanced.
22. Writ Petition is dismissed. Consequently, connected WMP is also dismissed. No costs.

Internet: Yes

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To

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